

IOWA ETHICS AND CAMPAIGN DISLCOSURE BOARD

IN THE MATTER OF:

TOM SLOCKETT, Johnson County
Auditor

CASE No. 2012 IECDB 05

REPRIMAND

On this 31st day of May, 2012, a complaint filed against Johnson County Auditor Tom Slockett came before the Iowa Ethics and Campaign Disclosure Board. The Board elects to handle this matter by administrative resolution rather than through a contested case proceeding process. See Iowa Admin. Code r. 9.4(2). For the reasons that follow, the Board hereby reprimands Tom Slockett for using government resources for political purposes in violation of Iowa Code section 68A.505.

BACKGROUND

Nathan Reckman filed a complaint against Mr. Slockett on April 25, 2012 alleging Mr. Slockett used government resources for political purposes in violation of Iowa Code section 68A.505. On April 27, 2012, the Iowa Ethics and Campaign Disclosure Board ("Board") determined the complaint was legally sufficient and ordered its staff to conduct an expedited investigation. See Iowa Code § 68B.32B (setting out the Board's complaint procedures and defining a legally sufficient complaint). The staff's investigation included interviews and/or depositions of Mr. Slockett, Mr. Reckman, ten members of Mr. Slockett's staff, two supporters of Mr. Slockett named in the complaint, as well as the current and former Johnson County Attorneys. The Board's staff also reviewed numerous documents and submitted its findings to the Board for review.

The complaint included several allegations. First, it alleged Mr. Slockett sent an email from his county email address to his office staff that referenced his opponent in the Democratic primary for the office of Auditor. The email stated "Well, at the joint appearance with my opponent last night, he blasted me for not making it easy enough for students and minorities to vote" Second, the complaint alleged Mr. Slockett circulated his nomination petition among the Auditor's office staff during work hours and confronted staff who did not sign the petition. Third, the complaint alleged Mr. Slockett changed a longstanding office policy that voter records had to be obtained in person with a signature in order to accommodate a friend's telephone request for

information related to Mr. Slockett's primary opponent. Fourth, the complaint alleged Mr. Slockett made numerous campaign-related telephone calls during the week of April 16, 2012 while he was in the Auditor's office.

ANALYSIS

Iowa Code section 68A.505 prohibits the use of public resources for political purposes. "Public resources" is broadly defined to mean "the moneys, time, property, facilities, equipment, and supplies of the executive branch of state government, a county, city, public school, or other political subdivision." Iowa Admin. Code r. 351—5.3. "Political purposes" means "the express advocacy of a candidate or ballot issue." Iowa Code § 68A.102(19). "Express advocacy" means a campaign contribution or a communication that contains "explicit words that unambiguously indicate the communication is recommending or supporting a particular outcome in the election with regard to any clearly identified candidate or ballot issue." *Id.* § 68A.102(14).

1. Reference to opponent in email

Mr. Slockett acknowledged sending the email in question to several members of his staff. While the reference to Mr. Slockett's opponent may have been superfluous, the Board finds the email did not contain express advocacy either in favor of Mr. Slockett's candidacy or against his opponent's candidacy. Therefore, Mr. Slockett did not violate section 68A.505 when he sent the email to several members of his staff using his county email address.

2. Circulation of nomination petition

Mr. Slockett acknowledged circulating his nomination petition in the Auditor's office among his employees during office hours. He also acknowledged that no other candidate was given the same opportunity to circulate his or her nomination petition in the same manner. Mr. Slockett expressed regret for circulating his petition in his office. He apologized to his office staff and voluntarily reimbursed his office \$34.40, for lost wages and benefits, based on a calculation of 5 minutes per person for 17 employees to review and sign (or not sign) his nomination petition. All of the staff members interviewed or deposed agreed Mr. Slockett never asked them to support his candidacy nor did he ask them not to support his opponent's candidacy.

The Board has recently found that given the statutory language, section 68A.505 is not violated if a nomination petition is circulated in a government

office or placed on a government office counter for members of the public to sign since a nomination petition does not expressly advocate for the candidate. IECDB AO 2012-01. However, the Board found that Iowa's conflict-of-interest statute, Iowa Code section 68B.2A, would be violated "if a government official or employee circulated his or her nomination petition in a government office . . . if other candidates were not given the same opportunity." Therefore, Mr. Slockett did not violate section 68A.505 when he circulated his nomination petition among his employees during office hours. Because there is prima facie evidence Mr. Slockett violated 68B.2A by circulating his nomination petition in the Auditor's office while other candidates were not given the same opportunity, the Board refers this matter to the Johnson County Attorney who has jurisdiction to consider complaints alleging violations of chapter 68B by local officials or local employees. See Iowa Code §§ 68B.32, 68B.34A.

3. Change in office policy

Mr. Slockett acknowledged he provided his friend with the voter registration information of Mr. Slockett's opponent over the telephone. Mr. Slockett further acknowledged his friend told him she was writing a letter to the editor in support of Mr. Slockett and wanted to note in her letter that Mr. Slockett's opponent was recently registered as a Republican. Mr. Slockett said he was not aware his office had a policy requiring such requests to be made in person with a signature and said he has never seen a copy of the policy. Many of Mr. Slockett's employees stated the Auditor's office always required individuals to request voter information in person with a signature. Following Mr. Slockett's friend's request, Mr. Slockett informed his staff that they may provide voter information over the telephone.

The Board believes it is the prerogative of the Auditor to set (or change) office policy regarding internal matters such as how requests for voter records should be handled. The Board does not believe Mr. Slockett providing the voter information of his opponent over the telephone amounted to express advocacy in favor of Mr. Slockett's candidacy or against the candidacy of Mr. Slockett's opponent. Moreover, the Board does not believe changing the policy on how voting records may be obtained is express advocacy. Therefore, Mr. Slockett did not violate 68A.505 when he provided his friend with his opponent's voter information, even assuming such a practice was a change in office policy.

4. Telephone calls

Mr. Slockett acknowledged working on his campaign while in the office during week of April 16. He said he made telephone calls using his private cell phone to ask people to publicly support his candidacy. Mr. Slockett said he does not believe he initiated any of these calls using the Auditor's phone line but acknowledged that some of his friends and supporters may have returned his call by calling his work number rather than his cell number.

Mr. Slockett said he was relying on the advice of both the current and former Johnson County Attorneys when he was making these telephone calls while in the office. Both Attorneys acknowledged they have advised county officials that it is permissible to use government resources for political purposes as long as there is no *additional* cost to the county.

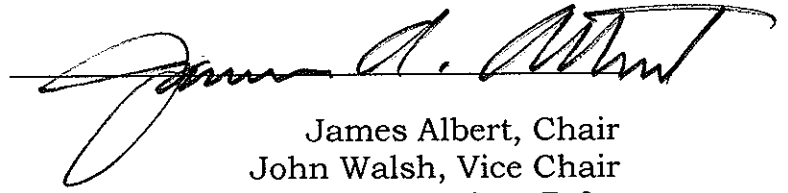
The Board finds 68A.505 prohibits the use of government resources, including office facilities and equipment, for political purposes regardless of whether or not the use of these resources incurs an additional cost to the government body. Mr. Slockett expressly advocated for his candidacy when he telephoned people and asked them to publicly support his re-election bid. Mr. Slockett used government resources—his office—when he made those telephone calls, even though most of them were on his private cell phone.

Nevertheless, the Board finds it is a mitigating factor that Mr. Slockett relied on the advice of counsel when making these telephone calls. Based on past Board precedent, the Board believes a reprimand, the least severe civil sanction, is the appropriate sanction for violating the law in reliance on the advice of counsel. See 2001 IECDB 12.

SUMMARY

Mr. Slockett is reprimanded for using government resources for political purposes in violation of Iowa Code section 68A.505. Pursuant to Iowa Code Administrative Rule 351—9.4(3), he may appeal the issuance of the reprimand by submitting within 30 days a written request for a contested case hearing. The Board will send a copy of the complaint along with this Order to the Johnson County Attorney for review to determine whether chapter 68B of the Iowa Code was violated when Mr. Mr. Slockett circulated his nomination petition among his staff during office hours.

By direction of the Board,

A handwritten signature in black ink, appearing to read "James A. Albert", written over a horizontal line.

James Albert, Chair
John Walsh, Vice Chair
Saima Zafar
Carole Tillotson
Jonathan Roos
Mary Rueter